

THE KAHULUI RAILROAD ACCIDENT.

ENQUIRY AT THE POLICE COURT.

WAILUKU.

Hix vs. Pierce Bourgue, Ernest L. Parker, and Palea Maha.

Manslaughter 3d degree in causing the death of Adèle W. Brown, Mildred Brown, Russell W. Brown, at Wailuku, Maui, on Feb. 14, 1884.

Before Hon. L. Ahole, sitting as Examining Magistrate on Feb. 28, 1884.

Defense admits accident, cause of death of Mrs. Brown and children. Mr. W. O. Smith appeared for Bourgue and Parker.

Charles Kanacholo (k) sworn, stated—I live in Wailuku. Am conductor on Hobron's railroad between Kahului and Wailuku. Was conductor on railroad on Feb. 14, 1884, at time of accident. Collision took place where railroad turns to go down to the beach. My train was coming to Wailuku. Did not see cars collide. We came and stopped and put blocks under wheels of cars at switch just below depot near terminus. When we stopped, as the usual thing we got off and put brakes down and put wood under wheels of cars. Cars kept moving and I put wood under wheels; did not hold and cars ran away. There is a grade at that place. No signal given to down brakes, but it is customary to do so when we stop. I got off and set brakes before the wood cars were let loose or got loose. Lia was on second wood car, do not know name of man on next car. All the cars had brakes on. Train made up as follows: Engine, freight, merchandise, passenger, four wood cars two lumber and one box car. Train was severed between passenger and first wood car. Cars stopped at switch. No cars at the coal platform, the rear car was nearest to platform. Cannot tell exactly how long the cars stopped before they started. About one minute I think. Do not know whether the engineer tried to see if train was fast or not. I blocked the wheels before the cars got away. The reason I did so was because I knew the brakes do not hold. Since I have been conductor the brakes have held the train sometimes. Brakes have not held the train before accident. I don't know how long. I do not remember how many times we blocked the wheels before accident. Don't know how many days. We made one trip in morning and one trip at time of accident. Do not remember whether my cars were switched off in the morning or not. It is the usual thing to block the wheels of big train at the switch. Do not remember about the morning trip. I went down to Kahului that day after first trip; went on train. Engine was ahead on down trip to Kahului in the morning. Engine got there by running on side track at depot. The cars were run in house. I remember now that the cars were switched off. Don't remember how many cars were in morning train, but more than 3. No wood cars. Do not remember about any coal cars, stopped the cars by ties and set brakes, it is the usual thing to do, to block the wheels with wood. Came up from Kahului to Wailuku day before, 13th, made two trips; cars were switched off at depot. Do not remember whether there was any wood or coal on that train or not. We bring wood and coal for several parties. We bring wood and coal for Wailuku and Waikapu, and Waihee mills. Do not remember whether we brought any wood or coal for Wailuku mill that week or not. Do not remember whether we brought wood or coal that day or day before. I can remember that we got off and blocked the wheels that day. Engineer bosses the unloading of the cars. I do everything on the cars. Remember wood was on the p. m. train. Wood belonged to Wailuku Plantation. When the train parted the loose cars moved down first and the engine followed. I did not see the pin pulled. I set the brake on one car, only—the first wood car after passenger car. One brake on that car in end next to passenger car. Brake was on side of car. Can take hold of brake from the ground. Can see the coupling pin from where the brake is. When I set brake the pin was in. Right after putting brake down I put wood under the wheel, and then went to the hind wheel to block that one, and then the train started. Do not know how long it took the cars to pass where I was. I was trying to put wood under the wheels. After the train got in motion I jumped on brake and then on car. I jumped on brake because I know that sometimes brakes do not hold. Do not remember how long before that the brakes would not hold. Perhaps on one or two occasions before I found that the brakes would not hold. I did not tell any of the employees, because they all knew it. Sometimes the train has run away from the depot. They knew it. It is the usual thing for me to block the wheels. I do it of my own accord. Know Mr. Bourgue. Do not know if he knows the brakes will not hold. Mr. Parker was on the train that day. He knows that sometimes the brakes will not hold. As soon as the cars got away, the engine followed after them. After the cars stopped, the engine did not go up towards the watering place. Know Palea. Know where he lives. Was there that night, and told him to be up to Court next morning at 10 o'clock. Did not say to him what he was to testify to. Did not say anything to him about the coupling pin. Mr. Everett did not tell me to see Palea especially, but all the men on the train that day, I did say at the Coroner's inquest that Parker slackened up the engine, to see if the train would hold. The engineer tried to see if the train would hold by backing up his engine. When he backed up, the pin can be taken out. When the train got up to the switch it stopped for about a minute. The train was standing still. Sometimes when we stop, the engineer gives orders to down brakes, and sometimes I do it of my own accord. Do not stop the train whenever I please, but where the engineer says. The engineer told me at Kahului where to throw the wood off at the switch. Do not remember whether the whistle blew at that place or not. At Coroner's inquest I stated that I did not hear any order given to down brakes. I put a block of wood under two wheels. When cars are switched off I sometimes pull the pin; sometimes some of the other boys.

Cross-examined.—Did not say to him what he was to testify to. Did not say anything to him about the coupling pin. Mr. Everett did not tell me to see Palea especially, but all the men on the train that day, I did say at the Coroner's inquest that Parker slackened up the engine, to see if the train would hold. The engineer tried to see if the train would hold by backing up his engine. When he backed up, the pin can be taken out. When the train got up to the switch it stopped for about a minute. The train was standing still. Sometimes when we stop, the engineer gives orders to down brakes, and sometimes I do it of my own accord. Do not stop the train whenever I please, but where the engineer says. The engineer told me at Kahului where to throw the wood off at the switch. Do not remember whether the whistle blew at that place or not. At Coroner's inquest I stated that I did not hear any order given to down brakes. I put a block of wood under two wheels. When cars are switched off I sometimes pull the pin; sometimes some of the other boys.

Cross-examined.—7 cars got away, 5 destroyed, and 2 left. They are at Kahului now. They are the two cars on the hind end of the runaway cars (next to the passenger car). The brakes on those two cars are not in order. The pins on those two cars I do not remember about. The pin on car next passenger car was fastened by chain on end next to passenger car; on other end pin and chains there, but not fastened. We got one of the two cars from Spreckelsville this morning. On one end pin fastened by chain, on other not fastened. I am sure of that. Sometimes we have some cars on the grade while engine takes balance to Wailuku. They are held by the brakes. When we got to Wailuku that afternoon did not hear any order given to pull out the pin. When Parker gave me orders at Kahului, he told me that the wood was to be left at that place, and the balance of freight to be taken to the depot. Had cars remained stationary the four cars of wood could have been unladen in ten minutes. There were four of us, and one to help. When Parker gave orders at Kahului he said we were to unload the wood, then go up to depot as Skelton was to follow in ten minutes. The pin that was pulled out was fastened by a chain to the car. If the pin had not been pulled the cars would not have got away. Chain that held the pin was about a foot long. Of the two cars that escaped, the brakes would hold one pair of wheels, but not the other. The engine would always hold the train anywhere on the road. One time a car got away with a water tank. I do not remember what caused its getting away. The time some cars got away with some sugar the brakes would not hold, and the wood under the wheels broke. The cars were not attached to the engine, they were run out of the depot by hand.

By Attorney-General: It is a long time ago that the cars loaded with sugar got away. Cannot remember about freight on the train, but the cars running away with sugar was such an unusual event. Don't remember about whistle being blown on the 14th February at the switch. Remember hearing whistle when the engine was chasing runaway cars. My duties as conductor are to collect fares, and see to everything. All the train men work together. Engineer is our boss. Nobody collects fares besides myself.

By Mr. Smith: It is customary to blow whistle long when we get to a round bend just above where accident took place, and a short one at depot for down brakes.

By Attorney-General: Know Mr. Bourgue; he is the carpenter that does work on the cars. I have been employed on the cars five years or more. I don't know who looks after the brakes, but Bourgue works on them. As I said before, Mr. Bourgue looks after the brakes and cars, and repairs them.

Lia sworn, stated: I was on the train on the 14th February when the accident occurred. I was working on it doing all kinds of work. I was on the second wood car. Charlie Kanacholo was on the car ahead of me. When we got to the switch we got off and put wood under the wheels. It is the usual thing for us to do so. The whistle is blown as the signal for us to put down the brakes. I put the brakes on my car. The brakes on my car were not good, and would not hold. I put wood under the wheels. I put it of my own accord. If I cannot get wood, I put whatever I can get. Nobody told me to put wood under the wheels. Charlie told me to put wood under the wheels before. I have been on the train three weeks. The week of accident was first week. I was told when I went to work that when I put down brakes to put wood under wheels. The cars were standing when I jumped off, and I put down the brakes. They stood still about ten minutes. I found out that the brakes would not hold on the same day the accident occurred. On the day of the accident I came up on the first trip. I had occasion to use the brakes. They held the cars. My car on first trip was loaded. I put wood under the wheels of my car that trip. The reason I did so, was, there was no harm in being sure. We do not have the same cars on all trips. This car was a different car from the car I went up on in the morning. I could not swear to this particular car, as there are several cars like it. I have been

on cars before where the brakes would not hold, and I found out the same way that the brakes would not hold.

Cross-examined: I did not say that the cars stood ten minutes. I said about a minute. When we got to station am sure that engineer blew two short whistles to down brakes.

Nicholas (k) sworn, stated: I was on the train on 14th February, when collision took place between Wailuku and Kahului. I was on the car behind the engine, merchandise freight was on that car all this time that this happened. Palea was on the car with me. When the cars stopped at the switch they were moved up and down two times. The train never stood perfectly still. The train moved backward just below the depot. It moved about $\frac{1}{2}$ yard, then moved forward about $\frac{1}{2}$ yard, second time engine moved $\frac{1}{2}$ yard, and it stood still, and the wood cars ran away. The engine did not go back the second time. Did not see Palea pull out the pin. I never left the merchandise car. Palea jumped off. The car stopped. I saw him jump. The car was moving up when he jumped. He was trying to pull out the pin between the freight and passenger cars. He did pull it out as the cars were moving up. He then went behind the passenger car. Palea was on the ground. When he tried to pull out the pin he was walking with the train. Then he stood still as the cars were moving up, then he leaned against the cars between the wood and passenger cars. The passenger car is about 13 feet long. He walked along the ground to get there. The cars were moving all the time. It was about two or three seconds that the car passed him. At time he reached in he was standing still. The cars passed him till he stood about the middle of the first wood car, and he walked up with the cars. I was looking at Palea all the time, and when I looked back I saw the wood cars had got away. From the time Palea jumped off until I saw the wood cars run away, the passenger and freight cars never stopped moving up. Palea was looking up and down the track all the time. I was standing in on corner of car, right hand side of car, and Palea on the opposite side. All was clear between him and I, and I could see everything going on. The passenger car was full of people. Parker was standing on the left hand side of engine. Did not hear Parker say anything to Palea. From where Parker was he could see where Palea was. Parker was on the same side with Palea. I heard the whistle blow when we came to that place. Heard the whistle when the train was moving up. I saw the train men get off to set the brakes. I heard one blow of the whistle. I saw Charlie on one side. Don't remember which. Did not hear any whistle between time men jumped off to set the brakes and the time the cars ran away. When the cars ran away I went on the passenger car and tried to couple on as the passenger car caught up to it, but did not succeed, and then I went back to the freight car.

Cross-examined:—Did not hear Parker tell anybody to pull out the pin, had he called out I could have heard him. When the cars ran away I heard Parker call out "who in h—l pulled that pin out?" He was very angry. I heard the passengers say that Palea pulled the pin out. I asked Palea if he pulled the pin out, he said: "yes, Parker told me to." I told Parker that Palea said that he told him to pull the pin out. Parker told Palea that he was going to have him (Palea) shot. When Palea jumped out, the cars were moving slowly, nearly stopped.

By Attorney-General: I told Parker what Palea said after the accident. Parker jumped off the train close to where the accident took place. Palea was behind then; he followed the train down. It was about 10 minutes after that Palea got to where the train was. I was on the train all the time till it got down to where the accident was. Parker asked who pulled the pin as soon as cars away. I went on the passenger car to couple on when we caught up to the runaway cars. We started after them immediately. When I tried to couple on Charlie was behind. Nobody else tried to couple on except me. Everybody else had jumped off. None of the passengers did. I did not see Parker's boy try to couple on. He might have tried and I not seen as I was on my way back to the merchandise car. I did not meet him on my way back to merchandise car. I put it of my own accord. If I cannot get wood, I put whatever I can get. Nobody told me to put wood under the wheels. Charlie told me to put wood under the wheels before. I have been on the train three weeks. The week of accident was first week. I was told when I went to work that when I put down brakes to put wood under wheels. The cars were standing when I jumped off, and I put down the brakes. They stood still about ten minutes. I found out that the brakes would not hold on the same day the accident occurred. On the day of the accident I came up on the first trip. I had occasion to use the brakes. They held the cars. My car on first trip was loaded. I put wood under the wheels of my car that trip. The reason I did so, was, there was no harm in being sure. We do not have the same cars on all trips. This car was a different car from the car I went up on in the morning. I could not swear to this particular car, as there are several cars like it. I have been

on train 14th Feb, when collision took place, doing work attaching to the train. I was on the wood car on the third one from the engine. When we came up to the switch I put down the brake because we got to where we put off the wood. We got signal from the whistle of engine. I put down the brake and reached up and got a piece of wood to put under the wheels. The brake would not hold the car. I put wood under the wheel, the train never stopped. I jumped off when the train was in motion; it was moving up towards the switch. Before the cars ran away the engine stopped a very little while about half a minute. I knew the brake would not hold because I stepped and stood on it and it could not hold. I was on this same car before and tried the brakes and they would not hold. Do not know how long before day of accident I tried but I knew the brakes would not hold, and that was the reason I put wood under the wheels as it is the usual thing

for us to do so. I have been working for the road one month. I have been on different cars. The brakes would hold on level, but not on a grade. I have had brakes hold on cars on a grade if not loaded, but if loaded they would not hold. By trying the brake I can tell whether the brake will hold or not.

Cross-examined:—I was in the third car of those that got away. I knew the brakes would not hold before this time. I could not identify that car any more than another. There are lots of cars like it.

By Attorney-General:—There are so many cars out of order that I can't tell one from another.

Alexander Shelton sworn, stated:—I am one of the engineers on this road. It was my engine that collided with the runaway train. I got orders from Mr. Brown to go to Paia for fifteen cords of wood, with the same train that collided with the runaways. I was taking the wood to Wailuku. I was to leave ten minutes after the other train. Those were my orders. I left according to orders, as near as possible. I didn't time myself. The brakes on my train were in order, in such order that they would hold the train on such a grade. I tested them as I came along. The car repaire is supposed to keep the brakes in order. Mr. Bourgue does the car repairing (gent sitting over there). I have heard Mr. Parker report sometimes when the brakes were out of order, but there is no rule about it that I know of. I do not know to whom such reports are made when the brakes are out of order. I have been working on this road about 18 months. Don't know as it is the duty of any of the employees to examine the brakes. If any of the cars are out of order, they are immediately thrown out and repaired by Bourgue. If the brakes of any of the cars are out of order it is the duty of the car repaire to examine and to take the cars out and repair them. No train that I have had charge of has ever been examined in that manner. Do not know as any train of cars or any particular car has ever been examined by the employees of the company to see if they were in order or not. I know of train of cars running away before. Mr. Parker was in charge of train one time and I was of the other. Parker's train ran away last fall; it might have been October or November; it stopped by themselves on the level. I saw train boy running after it. Do not know whether the brakes on the cars were set or not. I was on engine taking water. They started to run away from the depot in Wailuku, those being loaded in the house got started and ran away. The time I got ran away with, I had a very heavy train and it got the best of me and pulled me down grade to the foot of it. The brakes were not down. Engine was ahead. The brakes on the wood cars can be set by the men stepping on them, without stepping on the ground. The engineer gives signal, one whistle, for setting the brakes. Engineer gives signal to uncouple the cars, two whistles. I have stopped a loaded train near the switch without the engine, at times; had brakes down and ties under the wheels. I have at times held a train in such a place by brakes alone. The road is run by Mr. Parker's orders and I do as he says. It is not the custom on other roads to uncouple part of a train on a grade. I hold a train which brakes are not in order with the engine until they are secure. It is not the engineer's duty to see if the brakes are in order. Mr. Parker gave orders on that specific day, and he had given me orders before, and in fact, acted as conductor. Sometimes there is a superintendent, sometimes not. If there is, he gives the orders. On this road it is left to the discretion of the engineer to detach a train whether the brakes are in order or not. The trains on this road have no conductors from whom the engineers get their orders. The engineer on this road acts as conductor, except so far as the collection of fares. If anything on my train is out of gear, I consult Mr. Parker, as he is the master mechanic. If any trouble with the brakes, we, Parker and I, detach the cars ourselves, and leave them to be repaired. Mr. Bourgue attends to the repairs. Do not know that anybody is appointed by the company to examine the cars before any report is made. Since I have been employed by the company, Mr. Bourgue has been the only man to examine the cars. Do not know that the running gear of the cars have ever been inspected.

Cross-examined:—When my train can away I thought that the water might have leaked out and wet the rails. It was not caused by any machinery or brakes being out of order. From Kahului the line of road runs to Paia in one direction, and to Wailuku in the other. Distance from Kahului to Paia is less than ten miles; it takes about an hour with a heavy train to run that distance, if a light train, $\frac{1}{2}$ an hour. Distance from Kahului to Wailuku is shorter than from Kahului to Paia; it takes about 20 minutes to run it. Capt. Hobron gave me orders not to run faster than seven miles an hour, and our orders have always been not to run fast. The day Mr. Brown gave me orders to go to Paia after firewood, Mr. Parker gave me the same orders afterwards, i.e., after Mr. B. did. As far as my duties were concerned, I have always tried to have all the cars, etc., in good order.

Mr. Bourgue has repaired a great many cars. Cars are liable to get out of order at all times and places. My position is subordinate to Parker. He is head engineer, and I do as he tells me.

EVIDENCE FOR THE DEFENSE.

W. E. Rowell, sworn, stated:—I am at present Superintendent of Kahului R. R. I was superintendent before from Oct. '82 to June '83 inclusive. I have been somewhat familiar with railroads in the United States. My work has been in iron, smelting works, mining and transportation of ores in Pennsylvania and Illinois. The locomotives on the Kahului road are of the best approved make and fittings, with brakes, etc. I am not positive of the weight of the engines but

I think they weigh about eight tons. We have not run what might be called passenger trains except on one or two occasions. They are freight cars entirely, but one of them is fitted with seats for passengers. I have seen cars of similar construction in the United States. Have seen cars in the United States fitted up with the same kind of brakes in Illinois, cars that furnished us with coal. The locomotive is able to hold the train anywhere on this road. With this kind of engine and road it is possible to work the train with two or three cars with brakes. On other roads they have one or two cars fitted with brakes only. There is a train on Wilder's road at Mahukona that has no brakes on the cars. Mr. Bourgue is the carpenter of this road and does whatever he is directed to do, repairs brakes, cars and sometimes on work not connected with the road. I do not think that one man's time would be fully occupied in that work alone. Mr. Bourgue is always ready to do what he is asked to do and I should call him a very faithful man. He has never been blamed for cars being out of repair. Has always attended to things when asked during my time as superintendent before. I do not know where these cars came from. When I was here before in charge Parker was engineer and conductor. It has not seemed necessary to employ a separate conductor from the engineer. Mr. Parker from my experience is well posted in his work as engineer, very watchful and faithful in all respects. He is not by any means a reckless man. The trains on the Kahului road are not run faster than from six to ten miles an hour. Distance to Wailuku is four miles; takes half an hour about, sometimes twenty minutes. The road is very firmly built both in case of the rails and weight of same and in the case of the ties. The curves are well laid out and the road properly raised so no danger of cars running off on account of the curve. The grade on this road is no greater than I have seen on passenger roads. Any road requires constant care and carefulness in running it and I do not think that this road needs more care and watchfulness than any other. The engine can hold the train anywhere on this road with brakes on either cars or engine, by turning on steam enough to keep the wheels stationary. I am not acquainted with Palea. A month after I took charge two men came to me and wanted me to let them ride on the train free as they carried Paia.

The Attorney General admits that the Kahului, Wailuku and Hamakua R. R. is an incorporated company under date of July 1, 1881, with Captain T. H. Hobron, President; W. H. Bailey, Treasurer, and W. O. Smith, Secretary. Also that the road was run by Capt. Hobron alone two years prior to this.

Keala (k) sworn, stated:—I was on Parker's engine day of accident as fireman. We came up to the place where Parker wanted to stop and Parker called out, "Joe block your wheel." The engine had not reached the switch. Then I put down my brakes on "Charlie" three times, and I saw Charlie and Lia standing by the train. As I looked up when Parker called out Charlie I saw the rear car moving off. I could not say that the engine had come to a stop. I did not hear Parker give instructions to pull out the pin. I had not got through turning my brake down when I saw the cars moving off. I did not hear Parker at that time ask who pulled out the pin. I shortly after left the engine and went over the merchandise freight car to the passenger car and tried to re-couple them.

Cross-examined: I saw Nicolas in the middle of the passenger car as I went back to try to re-couple. I did hear the whistle blow once as a signal to down brakes. When we were chasing the runaway car whistle blew frequently. I did not hear the whistle blow again before we started after the runaway.

Ernest L. Parker, sworn, stated:—I have been employed as engineer on this R.R. four years 15th next month (March), baye been railroad engineer since fall of 1872. Was engineer on the Central Pacific road before I came here. We left Kahului Feb. 14th, between 1:30 and 1:40 p. m. Engine and nine cars. The way the train was made up is the same as the witnesses before stated. The best car of the train was the car in which the passengers were in who were killed, Mrs. Brown and three children, wife of Mr. Brown who was acting as superintendent, my own wife and child and others were in the car. The first stop I made coming up the grade was just below the switch, below the Wailuku depot. We stopped there to unload four cars of wood. I intended to stop there